

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7695 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MANUBHAI @ CHIKABHAI NATHABHAIPRAJAPATI

Versus

STATE OF GUJARAT

Appearance:

MR YN OZA for Petitioner

MR UA TRIVEDI, AGP for Respondent No. 1

MR VH DESAI for Respondent No. 4

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 03/12/96

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order of detention dated August 30, 1996.

2. It appears from the grounds of detention that the land bearing survey No. 549/1 paiki admeasuring 2829 sq. mtrs. situated at village Sarkhej, Dist. Ahmedabad was

held by the one Shri Patel Narayanbhai Somnathbhai. The competent authority vide order dated August 06, 1986, declared the aforesaid land as excess vacant land and as such, the said land was ordered to be acquired under section 8(4) of the Urban Land (Ceiling and Regulations) Act, 1976 (hereinafter referred to as 'the ULC Act, 1976'). The said Shri Patel took the matter in appeal to the Urban Land Tribunal. The appeal was rejected. The order of the Tribunal is challenged before this Court by way of Special Civil Application being No. 4284/89. This Court granted status quo on the condition that said land owner i.e. Mr Patel will not change the character of the property and will not transfer the said property to create any charge thereon. It is alleged that even though the land in question was excess land under the ULC Act and its possession was taken over by the Government, the detinue obtained banakhat for the same in the name of his brother's wife Gauriben Amarshi Prajapati, the original owner of the land on 21/11/90 and had taken possession of 763 sq. yards of land. It also appears from the grounds of detention that the detinue had also obtained irrevocable Power of Attorney of even date from the original land owner Shri Naranbhai Somnath Patel. It further appears that the constructions were made on the said land in breach of the stay order passed by this Court. It is also alleged that the detinue constructed some 28 shops on the land without obtaining any permission for making such constructions, as required by the Gujarat Town Planning Act, 1976. The detinue also executed banakhat for the sale of one of the shops in favour of one Jayantilal Madhavlal and has rented out the remaining 120 shops and realized the total monthly rent of Rs.21,000/- from the tenants of the shops. On the basis of this material, the detaining authority has taken the view that the detinue was a property grabber and he was likely to indulge in similar activities in respect of other lands and his activities were likely to result in breach of public order.

3. Mr Y.N.Oza, learned counsel appearing for the petitioner has challenged the order of detention on numerous grounds. It is contended by Mr Oza that there was a undue and unreasonable delay in passing the impugned order of detention, which stands unexplained, vitiates the same. It is submitted that the petitioner has been detained on the basis of solitary incidents of the year 1990. The possession of the land in question was taken on January 27, 1994. Even if the said date is taken as relevant date for considering the delay, the order of detention has been passed on August 30, 1996 i.e. after 2 years and 7 months. Thus, the live-link

between the alleged activities and the purpose of detention is snapped. In support of his contentions, learned counsel has placed reliance on various decisions of the Apex Court which may be referred to as under :

1. AIR 1975 SC 1515
2. AIR 1990 SC 516
3. 1993 (2) Suppli. 61
4. 1990(4) SCC 135
5. 1989(4) SCC 741

4. Mr UA Trivedi, learned AGP has invited my attention to para 4.6 of the affidavit filed by the detaining authority viz. Shri Vipul Mitra, the then District Collector and District Magistrate, Ahmedabad. Mr Mitra has stated in his affidavit that the possession of the land in dispute was taken on January 27, 1994 by the officers of the Department of Urban Land Ceiling. The proceedings were initiated under the Bombay Land Revenue Code to remove the encroachment viz. removal of tenants occupying the shops. During the course of proceedings, the statements of the occupants of the shops, erstwhile land owner and also petitioner detenue were recorded. It is also stated that even after 01/02/1994 till the passing of the order of detention dated August 30, 1996, the petitioner detenue has collected Rs.6,75,800/- towards the rent of the shops illegally constructed by grabbing Government land.

5. Mr Trivedi has further stated, on the basis of the record available with him, in order to supplement whatever has been stated by the detaining authority in the affidavit, that the sponsoring authority made the proposal for the detention of the petitioner on August 24, 1995. However, the same was returned by the detaining authority for collection of further materials by letter dated 09/01/1996. The sponsoring authority, after collecting the further material, re-submitted the proposal on 11/06/1996. Still there was some defects in the proposal and therefore, some more information was sought and ultimately, the impugned order of detention was passed on August 30, 1996.

6. I have gone through the material on record with the assistance of the learned counsel for the parties. The alleged solitary act is for the year 1990. The Government took possession as per their saying in January 1994. Thereafter, sponsoring authority made the proposal only in August 1995. There is explanation why sponsoring authority took another 1.1/2 years in collecting the material in sponsoring the proposal. The detaining

authority sent the proposal back for further investigation under communication dated 9/1/96. There is no explanation as to why matter remained pending with the detaining authority during the period from August 1995 to January 1996 i.e. for 5 months. After January 1996, the sponsoring authority re-submitted the proposal with required information on 11/6/96. Again, there is delay of six months. Even thereafter, detaining authority took two months in passing the impugned order of detention. Thus, there is unexplained delay of different periods as indicated above. This demonstrates the casual manner the respondents have dealt with the matter.

8. I have gone through all the cases cited at bar. It is well settled that though the delay ipso facto in passing the order of detention after the incidents may not be fatal to the detention of a person, but the delay must be satisfactorily explained by the detaining authority. As there is unexplained delay, the further detention of the petitioner has become illegal.

9. In view of the aforesaid, this Special Civil Application is allowed. The impugned order of detention dated August 30, 1996 is quashed and set aside. The petitioner detenue shall be set at liberty, if he is not required in any other case. Rule is made absolute accordingly.

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